

AMENDED IN ASSEMBLY APRIL 7, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2756

Introduced by Assembly Members Thurmond and Williams

February 19, 2016

An act to amend Sections 3236.5, 3350, 3351, 3352, 3356, and 3357 ~~of~~ *of, and to repeal and add Article 4.3 (commencing with Section 3260) of Chapter 1 of Division 3 of*, the Public Resources Code, relating to oil and gas.

LEGISLATIVE COUNSEL'S DIGEST

AB 2756, as amended, Thurmond. Oil and gas operations: enforcement actions.

(1) Under existing law, the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation regulates the drilling, operation, maintenance, and abandonment of oil and gas wells in the state. Existing law provides that a person who violates certain requirements related to the regulation of oil and gas is subject to a civil penalty not to exceed \$25,000 for each violation. Existing law requires the *State* Oil and Gas Supervisor to consider specified circumstances when establishing the amount of the civil penalty.

This bill instead would authorize the supervisor to consider specified circumstances when establishing the amount of the civil penalty. The bill would authorize the supervisor, in his or her discretion, to treat each day a violation continues or is not cured as a separate violation. The bill would authorize the supervisor to allow a supplemental environmental project, as defined, in lieu of a portion of the civil penalty amount, not to exceed 50% of the civil penalty amount, as specified. *The bill would require that the civil penalties assessed under these*

provisions be deposited in the Oil and Gas Environmental Remediation Account. The bill would establish that account in the Oil, Gas, and Geothermal Administrative Fund to be administered and managed by the division, and would require that the moneys in the account be used, upon appropriation by the Legislature, to plug and abandon oil and gas wells, decommission attendant facilities, or otherwise remediate sites that the supervisor determines could pose a danger to life, health, water quality, wildlife, or natural resources if there is no operator determined by the supervisor to be responsible for plugging and abandoning the well or who is able to respond. The bill would authorize the division to adopt regulations to implement these provisions, and would repeal obsolete provisions related to the Acute Orphan Well Account.

(2) Existing law establishes procedures for an operator of a well or production facility to appeal to the Director of Conservation from an order of the supervisor or a district deputy. Existing law requires a notice of appeal to be filed with supervisor or with the district deputy who issued the order.

This bill would make numerous changes to the appeal process and procedures. The bill would, among other things, require the notice of appeal to be filed with the director, revise exceptions for when the notice of appeal operates as a stay of the order, revise what costs will be refunded if an emergency order is set aside or modified on appeal, and revise the circumstances in which appeals are to be heard in a formal hearing process before an administrative law judge, instead of in an informal hearing before the director.

This bill would make numerous changes to the process and procedures for an informal hearing before the director. The bill would, among other things, authorize the director to extend the date of the hearing for good cause upon his or her own motion, remove the authorization for the hearing to be electronically recorded by either party, revise the timeline in which the director is required to grant or deny a petition to order the testimony of a witness at the hearing, and provide that obtaining subpoenas may be considered good cause to extend the date of the hearing.

(3) Existing law sets forth numerous provisions governing discovery in the context of an informal hearing before the director. Existing law authorizes the supervisor or the director, upon application to a judge of the superior court of the county within which the proceeding or investigation is pending, to obtain a subpoena compelling the attendance

of witnesses and the production of records, surveys, documents, books, or accounts at such places as the judge may designate within the limits prescribed in these provisions.

This bill would make numerous changes to these discovery provisions. The bill would, among other things, require a judge of the superior court, upon application by the supervisor or director, to assign a case number for the proceeding or investigation, to issue an order prescribing the nature and scope of the proceeding or investigation, and to retain jurisdiction for the limited purpose of enforcing subpoenas issued in the proceeding or investigation; authorize the attorney of record for the supervisor or director, upon the assigning of a case number, to issue subpoenas compelling the attendance of witnesses and the production of records, surveys, documents, books, or accounts for certain pending proceeding or investigation in the manner specified; authorize the supervisor or director, or his or her inspector, to inspect the well site or production facilities of any owner or operator to ascertain whether the owner or operator is complying with the certain requirements; authorize the supervisor or director to require any owner or operator to furnish, under penalty of perjury, technical or monitoring reports that the supervisor or director require; and prohibit the division and the department from making available to the public for inspection portions of a report that might disclose trade secrets, well data granted confidential status, or other confidential or privileged information, when requested by the owner or operator furnishing the report. Because the bill would expand the crime of perjury, it would impose a state-mandated local program.

(4) Existing law provides if the operator does not appeal an order, seek judicial review of a decision affirming or modifying an order within the time provided in law, or if the court has affirmed the decision, then any charge, including penalty and interest, that the decision permits the supervisor to impose constitutes a state tax lien against the real and personal property of the operator.

This bill additionally would include any civil penalties imposed by the supervisor for violations of certain requirements related to the regulation of oil and gas in these provisions. The bill would authorize the supervisor to apply to the appropriate superior court for a clerk's judgment, in addition to the state tax lien, and would provide provisions related to obtaining the clerk's judgment.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3236.5 of the Public Resources Code is
2 amended to read:

3 3236.5. (a) A person who violates this chapter or a regulation
4 implementing this chapter is subject to a civil penalty not to exceed
5 twenty-five thousand dollars (\$25,000) for each violation. At the
6 supervisor's discretion, each day a violation continues or is not
7 cured may be treated as a separate violation. For each day a
8 violation of Article 3 (commencing with Section 3150) continues
9 or is not cured, the civil penalty amount shall ~~not be~~ *be not* less
10 than ten thousand dollars (\$10,000). An act of God and an act of
11 vandalism beyond the reasonable control of the operator shall not
12 be considered a violation. The civil penalty shall be imposed by
13 an order of the supervisor pursuant to Section 3225 upon a
14 determination that a violation has been committed by the person
15 charged. The imposition of a civil penalty under this section shall
16 be in addition to any other penalty provided by law for the
17 violation. When establishing the amount of the civil penalty
18 pursuant to this section, the supervisor may consider, in addition
19 to other relevant circumstances, all of the following:

- 20 (1) The extent of harm or potential harm caused by the violation.
21 (2) The persistence of the violation.
22 (3) The pervasiveness of the violation.
23 (4) The number of prior violations by the same violator.
24 (5) The degree of culpability of the violator.
25 (6) Any economic benefit to the violator resulting from the
26 violation.
27 (7) The violator's assets, liabilities, and net worth.
28 (8) The supervisor's prosecution costs.

29 (b) An order of the supervisor imposing a civil penalty shall be
30 reviewable pursuant to Article 6 (commencing with Section 3350).

1 When the order of the supervisor has become final and the penalty
2 has not been paid, the supervisor may apply to the appropriate
3 superior court for an order directing payment of the civil penalty.
4 The supervisor may also seek from the court an order directing
5 that production from the well or use of the production facility that
6 is the subject of the civil penalty order be discontinued until the
7 violation has been remedied to the satisfaction of the supervisor
8 and the civil penalty has been paid.

9 (c) The supervisor may allow a supplemental environmental
10 project in lieu of a portion of the civil penalty amount. The
11 supplemental environmental project may not be more than 50
12 percent of the total civil penalty amount. Any amount collected
13 under this section that is not allocated for a supplemental
14 environmental project shall be deposited in the Oil, Gas, and
15 Geothermal Administrative Fund.

16 (d) “Supplemental environmental project” means an
17 environmentally beneficial project that a person, subject to an order
18 of the supervisor imposing a civil penalty, voluntarily agrees to
19 undertake in settlement of the action and to offset a portion of a
20 civil penalty.

21 (e) *Civil penalties assessed pursuant to this section shall be*
22 *deposited in the Oil and Gas Environmental Remediation Account*
23 *established pursuant to Section 3261.*

24 SEC. 2. *Article 4.3 (commencing with Section 3260) of Chapter*
25 *1 of Division 3 of the Public Resources Code is repealed.*

26 SEC. 3. *Article 4.3 (commencing with Section 3260) is added*
27 *to Chapter 1 of Division 3 of the Public Resources Code, to read:*
28

29 *Article 4.3. Oil and Gas Environmental Remediation Account*
30

31 *3260. For purposes of this article, “account” means the Oil*
32 *and Gas Environmental Remediation Account established under*
33 *Section 3261.*

34 *3261. (a) Notwithstanding any other provision of this chapter,*
35 *including the expenditure limitations of Section 3258, the division*
36 *shall administer and manage the Oil and Gas Environmental*
37 *Remediation Account, which is hereby established in the Oil, Gas,*
38 *and Geothermal Administrative Fund.*

39 *(b) Moneys in the account shall be used, upon appropriation*
40 *by the Legislature, to plug and abandon oil and gas wells,*

1 *decommission attendant facilities, or otherwise remediate sites*
2 *that the supervisor determines could pose a danger to life, health,*
3 *water quality, wildlife, or natural resources if there is no operator*
4 *determined by the supervisor to be responsible for plugging and*
5 *abandoning the well pursuant to subdivision (c) of Section 3237*
6 *or who is able to respond.*

7 3262. The division may adopt regulations to implement this
8 article.

9 ~~SEC. 2.~~

10 SEC. 4. Section 3350 of the Public Resources Code is amended
11 to read:

12 3350. (a) The operator of a well or a production facility to
13 whom the supervisor or district deputy has issued an order pursuant
14 to this chapter may file a notice of appeal from that order. The
15 notice of appeal shall be in writing and shall be filed with the
16 director. The operator shall file the appeal within 10 days of the
17 service of the order, or within 10 days of the posting of a copy of
18 an order made pursuant to Section 3308. Failure of the operator
19 to file an appeal from the order within the 10-day period shall be
20 a waiver by the operator of its rights to challenge the order. If the
21 order, other than an order made pursuant to Section 3308, is served
22 by mail, the time for responding shall be determined as provided
23 in Section 1013 of the Code of Civil Procedure.

24 (b) (1) The filing of a written notice of appeal shall operate as
25 a stay of the order, except when an order for testing or remedial
26 work or an order to cease and desist production facility operations
27 is issued as an emergency order pursuant to Section 3226, or when
28 the order is to cease injection operations. If the order is an order
29 to cease injection operations, then the operator shall cease injection
30 as soon as it is safe to do so. If the order is an emergency order,
31 the operator shall immediately cease and desist the specified
32 production facility operations and shall perform whatever work is
33 required by the order to alleviate the emergency or shall permit
34 the agents appointed by the supervisor to perform that work.

35 (2) If an emergency order for testing or remedial work is set
36 aside or modified on appeal, the supervisor shall refund the
37 reasonable costs incurred by the operator for whatever work is not
38 required by the set-aside or modified order or shall not impose
39 costs for work performed by the supervisor or the supervisor's
40 agents if the work is excluded from the modified order or the order

1 is set aside. Only the costs of remedial work performed shall be
2 refunded, and there shall be no reimbursement for lost profits or
3 increased production costs.

4 (3) (A) The costs to be refunded pursuant to paragraph (2) by
5 the supervisor shall be determined in a hearing before the director
6 after the exhaustion of appeals. The operator shall have the burden
7 of proving the amount of costs to be refunded.

8 (B) A determination by the director as to the amount of costs
9 to be refunded pursuant to paragraph (2) may be appealed by the
10 operator pursuant to subdivision (a) of Section 3354.

11 (4) If the operator believes that it will be irretrievably injured
12 by the performance of the work required to alleviate the emergency
13 pending the outcome of the appeal, the operator may seek an order
14 from the appropriate superior court restraining the enforcement of
15 the order pending the outcome of the appeal.

16 ~~SEC. 3.~~

17 *SEC. 5.* Section 3351 of the Public Resources Code is amended
18 to read:

19 3351. (a) A hearing shall be provided in accordance with
20 Chapter 5 (commencing with Section 11500) of Part 1 of Division
21 3 of Title 2 of the Government Code only in an appeal from an
22 order in the following circumstances:

23 (1) Issued pursuant to a Section 3237 finding that the operator's
24 wells are deserted and should be plugged and abandoned.

25 (2) Imposing civil penalties totaling more than twenty-five
26 thousand dollars (\$25,000).

27 (3) Rescinding an entire injection project approval for a project
28 that has already commenced.

29 (4) Imposing a life-of-well bond or a life-of-production facility
30 bond.

31 (b) An order issued pursuant to Section 3225 shall satisfy the
32 substantive requirements of an accusation pursuant to Section
33 11503 of the Government Code and may be filed when scheduling
34 a formal hearing in accordance with this chapter and Chapter 5
35 (commencing with Section 11500) of Part 1 of Division 3 of Title
36 2 of the Government Code. All applicable formal hearing deadlines
37 do not commence until a formal hearing is scheduled. When
38 scheduling a formal hearing after an appeal from an order under
39 this chapter, the supervisor is not required to send a Notice of

1 Defense statement and the operator is not required to request a
2 hearing.

3 (c) For an appeal of an order that is not described in subdivision
4 (a), a hearing shall be conducted by the director in accordance with
5 Sections 3352 and 3353.

6 (d) For an appeal of an order that is described in subdivision
7 (a) and is also an emergency order for testing or remedial work or
8 to cease and desist production facility operations, a hearing shall
9 be conducted by the director in accordance with Sections 3352
10 and 3353 for the limited purpose of considering the reasonableness
11 of the supervisor's determination that an emergency exists. All
12 other penalties and requirements imposed by the order shall be
13 considered at a hearing provided in accordance with Chapter 5
14 (commencing with Section 11500) of Part 1 of Division 3 of Title
15 2 of the Government Code.

16 ~~SEC. 4.~~

17 *SEC. 6.* Section 3352 of the Public Resources Code is amended
18 to read:

19 3352. (a) A hearing conducted by the director shall adhere to
20 the following:

21 (1) When an order is not issued as an emergency order, within
22 30 days from the date of the service of the notice of appeal, the
23 director shall provide to the operator notice of the time and place
24 of the hearing. The hearing shall take place within 30 days after
25 the date of the director's notice. The notice shall inform the
26 operator that the director may extend the date of the hearing for
27 up to 60 days for good cause upon his or her own motion, or an
28 application of the operator or the supervisor.

29 (2) When an order has been issued as an emergency order, within
30 10 days from the date of the service of the notice of appeal, the
31 director shall provide to the operator notice of the time and place
32 of the hearing. The hearing shall take place within 20 days after
33 the date of the director's notice. The notice shall inform the
34 operator that the director may extend the date of the hearing for
35 up to 30 days for good cause upon his or her own motion, or an
36 application of the operator or the supervisor.

37 (b) The director shall conduct the hearing within the district
38 where the majority of the wells or production facilities that are the
39 subject of the order are located, or the hearing may be conducted

1 at a location outside of that district upon application of the operator.
2 The hearing shall be reported by a stenographic reporter.

3 (c) The notice of hearing shall inform the operator of its right
4 to file a written answer to the charges no later than 10 days before
5 the date of the hearing. The notice also shall inform the operator
6 that it has the right to present oral and documentary evidence at
7 the hearing.

8 (d) Upon a verified and timely petition of the operator, the
9 director may order the testimony of a witness at the hearing. The
10 petition shall be served upon the director and the other party within
11 five days after the filing of an appeal and shall set forth the name
12 and address of the witness whose testimony is requested, to the
13 extent known; a showing of the materiality of the testimony; and
14 a showing that the witness cannot be compelled to testify absent
15 an order of the director. The supervisor may file an opposition to
16 the petition within five days after the petition is served. The director
17 shall either deny or grant the petition within 10 days after receipt
18 of the petition. Upon granting a petition, the director shall issue a
19 subpoena pursuant to Section 3357 compelling the testimony of
20 the witness at the hearing. Obtaining subpoenas may be considered
21 good cause to extend the date of the hearing under paragraph (1)
22 or (2) of subdivision (a).

23 (e) The director may convert a hearing pursuant to this section
24 to a formal hearing conducted in accordance with Chapter 5
25 (commencing with Section 11500) of Part 1 of Division 3 of Title
26 2 of the Government Code in any of the following circumstances:

27 (1) The operator makes a showing satisfactory to the director
28 that the order being appealed is likely to result in termination of
29 an established oil or gas producing or injection operation.

30 (2) It appears to the director that the hearing will involve
31 complex evidentiary or procedural issues that will cause more than
32 minimal delay or burdens.

33 (3) The operator and the supervisor agree and stipulate to convert
34 the hearing to a formal hearing.

35 (f) The conversion of a hearing pursuant to this section to a
36 formal hearing shall be conducted in accordance with Article 15
37 (commencing with Section 11470.10) of Chapter 4.5 of Part 1 of
38 Division 3 of Title 2 of the Government Code. If a hearing for an
39 appeal of an emergency order is converted to a formal hearing, the
40 supervisor shall endeavor to schedule and notice a formal

1 emergency hearing as soon as reasonably possible and,
2 notwithstanding Section 11517 of the Government Code, the
3 director shall only have 30 days from receipt of the administrative
4 law judge's proposed emergency hearing decision to act as
5 prescribed in subparagraphs (A) to (E), inclusive, of paragraph (2)
6 of subdivision (c) of Section 11517 of the Government Code.

7 ~~SEC. 5.~~

8 *SEC. 7.* Section 3356 of the Public Resources Code is amended
9 to read:

10 3356. (a) If the operator does not appeal an order, if the
11 operator does not timely seek judicial review of a decision
12 affirming or modifying an order within the time provided in Section
13 3354, or if the operator has timely sought and obtained judicial
14 review and the court has affirmed the decision, then any charge,
15 including penalty and interest, that the decision permits the
16 supervisor to impose on the operator for work performed by the
17 supervisor or the supervisor's agents, and any civil penalties
18 imposed under Section 3236.5 shall constitute a state tax lien
19 against the real and personal property of the operator pursuant to
20 Section 3423.

21 (b) In addition to a state tax lien, the supervisor may apply to
22 the appropriate superior court for a clerk's judgment. The
23 application, which shall include a certified copy of the final agency
24 order or decision, shall constitute a sufficient showing to warrant
25 the issuance of the judgment. The court clerk shall enter the
26 judgment immediately in conformity with the application. The
27 judgment so entered shall have the same force and effect as, and
28 shall be subject to all the provisions of law relating to, a judgment
29 in a civil action, and may be enforced in the same manner as any
30 other judgment of the court. The court shall make enforcement of
31 the judgment a priority.

32 ~~SEC. 6.~~

33 *SEC. 8.* Section 3357 of the Public Resources Code is amended
34 to read:

35 3357. (a) In any proceeding before the director, and in any
36 proceeding instituted by the supervisor for the purpose of enforcing
37 or carrying out the provisions of this division, or for the purpose
38 of holding an investigation to ascertain the condition of any well
39 or wells complained of, or which in the opinion of the supervisor
40 may reasonably be presumed to be improperly located, drilled,

1 operated, maintained, or conducted, the supervisor and the director
2 shall have the power to administer oaths and may apply to a judge
3 of the superior court of the county in which the proceeding or
4 investigation is pending for subpoenas for witnesses to attend the
5 proceeding or investigation. Upon the application of the supervisor
6 or the director, the judge of the superior court shall assign a case
7 number for the proceeding or investigation, shall issue an order
8 prescribing the nature and scope of the proceeding or investigation,
9 and shall retain jurisdiction for the limited purpose of enforcing
10 subpoenas issued in the proceeding or investigation. Upon the
11 assigning of a case number, the attorney of record for the supervisor
12 or director may issue subpoenas directing witnesses to attend the
13 proceeding or investigation, and those persons shall be required
14 to produce, when directed, all records, surveys, documents, books,
15 or accounts in the witness' custody or under the witness' control;
16 except that no person shall be required to attend upon the
17 proceeding unless the person resides within the same county or
18 within 100 miles of the place of attendance. The attorney of record
19 for the supervisor or the director may in that case cause the
20 depositions of witnesses residing within or without the state to be
21 taken in the manner prescribed by law for like depositions in civil
22 actions in superior courts of this state under Title 4 (commencing
23 with Section 2016.010) of Part 4 of the Code of Civil Procedure,
24 and may issue subpoenas compelling the attendance of witnesses
25 and the production of records, surveys, documents, books, or
26 accounts at designated places within the limits prescribed in this
27 section.

28 (b) (1) In conducting a proceeding or investigation specified
29 in subdivision (a), the supervisor or director may require an owner
30 or operator to furnish, under penalty of perjury, technical or
31 monitoring reports that the supervisor or director requires. The
32 burden, including costs, of any report shall bear a reasonable
33 relationship to the need for the report and the benefits to be
34 obtained from the report. In requiring a report, the supervisor or
35 director shall explain in writing to the owner or operator the need
36 for the report, and shall identify the evidence that supports
37 requiring that owner or operator to provide the report.

38 (2) When requested by the owner or operator furnishing the
39 report, neither the division nor the department shall make available
40 to the public for inspection portions of a report that might disclose

1 trade secrets, well data granted confidential status pursuant to
2 Section 3234, or other confidential or privileged information. The
3 division or department shall make that confidential or privileged
4 information available to other public agencies as needed for
5 regulatory purposes and in accordance with a written agreement
6 with the other public agency regarding the sharing of the
7 information.

8 (c) In conducting a proceeding or investigation pursuant to
9 subdivision (a), the supervisor or director, or his or her inspector,
10 may inspect the well site or production facilities of any owner or
11 operator to ascertain whether the owner or operator is complying
12 with the requirements of or authorized by this division. The
13 inspection shall be made with the consent of the owner or operator
14 or, if consent is withheld, with a warrant duly issued pursuant to
15 the procedure set forth in Title 13 (commencing with Section
16 1822.50) of Part 3 of the Code of Civil Procedure. In the event of
17 an emergency affecting the public health or safety, an inspection
18 may be performed without consent or a warrant. This subdivision
19 is in addition to any other inspection authority granted or authorized
20 by this division.

21 (d) As used in this section, “evidence” means any relevant
22 evidence on which responsible persons are accustomed to rely in
23 the conduct of serious affairs, regardless of the existence of any
24 common law or statutory rule that might make improper the
25 admission of the evidence over objection in a civil action.

26 ~~SEC. 7:~~

27 *SEC. 9.* No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.